

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
HOPE CHERIE TOLBERT and) CASE NO. 09-21557 JPK
JULIUS MAURICE TOLBERT,) Chapter 13
)
Debtors.)

ORDER REGARDING EMERGENCY MOTION
TO IMPOSE THE AUTOMATIC STAY ("MOTION")

This Chapter 13 case was initiated by a petition filed on April 23, 2009. The Motion was also filed on April 23, 2009. The record in this case discloses that the debtors are subject to the provisions of 11 U.S.C. § 362(c)(4), i.e., the automatic stay of 11 U.S.C. § 362(a) is not in effect at all as a result of the initiation of this Chapter 13 case. The Motion states that a sheriff's sale is scheduled on May 1, 2009 with respect to the debtors' principal residence, and this statement is the designation of the "emergency" referenced in the title of the Motion.

11 U.S.C. § 362(c)(4) provides, with respect to the circumstances of this Chapter 13 case, that the "stay under sub-section [362] (a) shall not go into effect upon the filing of [this case]" . . . until the court enters an order pursuant to 11 U.S.C. § 362(c)(4)(B) which provides for the taking effect of the stay. This order can only be entered "after notice and a hearing". The phrase "after notice and a hearing" is defined by 11 U.S.C. § 102(1), essentially to be "such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances". This court has adopted the rule of thumb that ten days' notice of any hearing pursuant to 11 U.S.C. § 362(c)(3) or 11 U.S.C. § 362(c)(4) is appropriate under the circumstances under which such motions are filed, and that any notice of less than that period of time does not provide creditors – particularly secured creditors sought to be immediately affected by those motions – with sufficient time to effectively respond to those motions and prepare for a hearing. The Motion was filed electronically at 6:02 P.M. CST on April 23, 2009. Assuming immediate processing by the Clerk's Office, this Motion would have been

brought to the court's attention at the earliest at some time on April 24, 2009. Had the court immediately scheduled a hearing on that Motion, notice to all creditors and parties-in-interest would have been provided by means of the court's notice system, and at its most rapid possible effectuation, notice of a hearing would have been mailed to creditors on Sunday, April 26, 2009, and more likely on Monday, April 27. Assuming two-three days' mailing time, any creditor impacted by the hearing requested by the Motion would not have received notice of the hearing until at best Wednesday, April 29, 2009. The requested hearing had to have been held on April 30, 2009. The court determines that under the record established by this case, it is impossible to provide an "opportunity for a hearing as is appropriate in the particular circumstances" of this case with respect to the focus of the Motion – imposing the automatic stay in advance of the scheduled sheriff's sale. The court declines to schedule a hearing in advance of that sale with respect to the Motion.

IT IS ORDERED that any request in the Motion to schedule a hearing pursuant to 11 U.S.C. § 362(c)(4) in advance of the sale scheduled for May 1, 2009 is denied.

IT IS FURTHER ORDERED that a hearing on the Motion is scheduled for **May 21, 2009, at 1:50 P.M.**

Dated at Hammond, Indiana on May 7, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
All Creditors, All Parties-in-Interest